United Nations A/HRC/37/65

General Assembly

Distr.: General
6 June 2018

Original: English

Human Rights Council
Thirty-seventh session
26 February–23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide*, **

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide on their joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence, prepared pursuant to Human Rights Council resolution 33/19.

* The present document was submitted late to the conference services without the explanation required under paragraph 8 of General Assembly resolution 53/208 B.

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GE.18-09114(E)
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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 33/19, in which the Council requested the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide to prepare a joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence.

2. The Special Rapporteur and the Special Adviser were asked, in preparing the study, to seek the views of States, relevant United Nations mandate holders, relevant United Nations agencies, funds and programmes, and in particular the Office of the United Nations High Commissioner for Human Rights (OHCHR), intergovernmental organizations, national human rights institutions, non-governmental organizations and other relevant stakeholders (see annex).

3. The two experts welcome the opportunity to collaborate in articulating views on the prevention of atrocity crimes, a long-standing issue of concern to the entire United Nations system. The issue has regained prominence, given the emphasis placed on prevention by the new Secretary-General, who has underscored the vast resources expended in responding to crises, rather than preventing them, and has stated that prevention is not merely a priority, but the priority,[1] with atrocity prevention at the heart of his overall prevention agenda (see A/71/1016-S/2017/556).

A. Atrocity prevention: definitions

4. The purpose of the present report is to highlight the ways in which transitional justice can contribute to the prevention of gross violations of human rights and serious violations of international humanitarian law, in particular genocide, war crimes, ethnic cleansing and crimes against humanity.

5. The term "atrocity crimes" refers to those four categories of acts. Genocide, crimes against humanity and war crimes are crimes under international law.[2] Although not explicitly defined as an independent crime under international law, ethnic cleansing includes acts that are serious violations of human rights and humanitarian law and that may amount to crimes against humanity, genocide or war crimes (see A/70/741-S/2016/71, annex). "Atrocity prevention" refers to the prevention of those four types of acts.

6. Atrocity prevention is closely related to conflict prevention, however, they are not the same. Whereas the risk of atrocity crimes increases significantly in situations of armed conflict, and is further elevated if the conflict takes place within a State with a repressive governance regime, genocide and crimes against humanity can also take place during peacetime. What distinguishes atrocity crimes is the perpetrators' targeting of specific groups, sometimes with cyclical reprisals between communities. Atrocity prevention therefore requires an approach that is complementary to but distinct from a pure conflict prevention approach.

7. Unlike genocide and war crimes, which are recognized and prohibited under international criminal law, there is no convention on crimes against humanity. The definition of "crimes against humanity" was developed under customary law and codified in the Statutes of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and in article 7 of the Rome Statute of the International

[1] UN News, "At Security Council, UN chief Guterres makes case for new efforts to build and sustain peace", 10 January 2017. Available at www.un.org/apps/news/story.asp?NewsID=55935#.WZtN-rxB-ew.

[2] Convention on the Prevention and Punishment of the Crime of Genocide, art. 2; Geneva Conventions of 12 August 1949 and Additional Protocol I thereto.

Criminal Court. Since 2014, the International Law Commission has been preparing a draft convention (see A/69/10, A/70/10, A/71/10 and A/72/10). Finalizing and adopting the draft convention would demonstrate the commitment of the United Nations to atrocity prevention.

B. Preventive potential of transitional justice

8. The preventive potential of transitional justice is not always recognized, perhaps due to the tendency to regard transitional justice as mainly a past-oriented policy, which is surprising, given that the promise of "never again", so powerfully reflected in the Charter of the United Nations, has always been an important motivation for implementing transitional justice measures.

9. Even if transitional justice were exclusively focused on redress, redress is important on many levels. Effective redress is a right. Legally, lack of redress is a violation in its own right, a denial of justice. Morally, redress is an acknowledgement of the suffering of the victims and their families and contributes to restoring their dignity, to a certain extent. Practically, redress is important from the perspective of prevention, given the patterns of violations.

10. At the macro level, a strong predictor of violence and atrocity crimes is a history of serious violations or atrocity crimes, and a record of such acts is risk factor 2 in the Framework of Analysis for Atrocity Crimes (A/70/741-S/2016/71, annex) developed by the Office of the Special Adviser. In addition, countries with recent experience of armed conflict are more prone than others to return to armed conflict.[3]

11. At the micro, individual level, acknowledging that the notion of the "cycle of violence" distorts more than it illuminates,[4] it is telling that many instigators of violence have themselves been exposed to violence. Although transitional justice should not be conceived primarily as a peacemaking instrument, numerous indicators demonstrate that it can contribute to sustainable peace and security by helping to break cycles of violence and atrocities, delivering a sense of justice to victims and prompting examinations of deficiencies in State institutions that may have enabled, if not promoted, those cycles.

12. One contribution made by transitional justice is in the unpacking of the concept of redress, which has led to recognizing that criminal justice alone is an insufficient response to atrocities (see A/HRC/36/50/Add.1). In each of its constitutive pillars (truth, justice, reparation and guarantees of non-recurrence), transitional justice has made contributions to the entrenchment, operationalization and realization of corresponding rights. With criminal justice, transitional justice has therefore contributed to the entrenchment of the right to justice by developing techniques for coping with amnesties, elaborating prosecutorial strategies and diversifying the venues in which criminal justice is sought, including hybrid and international courts. Notably, transitional justice was instrumental in entrenching and operationalizing the right to truth and the right to reparations, which were only aspirations prior to the establishment of transitional justice as a field of theory and practice, the former through truth-seeking tools such as truth commissions, commissions of inquiry and accessible archives and the latter mainly through the establishment of massive administration programmes offering not just economic compensation but complex benefits packages to victims.

13. The forms of redress characteristic of transitional justice are meant to be corrective, as a response to harms and, more broadly, with regard to the context in which such violations were made possible to begin with. Each component of transitional justice can contribute to preventing further atrocities: criminal justice, through the assertion of

[3] Kjersti Skarstad and Håvard Strand, "Do human rights violations increase the risk of civil war?", *International Area Studies Review*, vol. 19, No. 2 (2016); David Cingranelli and others, "Human rights violations and violent conflict", background paper for the United Nations-World Bank flagship study entitled "Pathways for peace: inclusive approaches to preventing violent conflict".

[4] Margaret Urban Walker, "The cycle of violence", *Journal of Human Rights*, vol. 5, No. 1 (2006).

accountability, which thereby generates a deterrent effect; signalling that no one is above the law, which is important for social integration; the disruption of the criminal networks responsible for atrocities; and the confrontation of the most violent manifestations of discrimination, marginalization and horizontal inequalities. As noted in the Framework of Analysis for Atrocity Crimes (A/70/741-S/2016/71, annex), lingering perceptions of injustice, failure to recognize crimes committed and continued discrimination against communities are risk factors for further violence and atrocities.

14. Truth-telling contributes to atrocity prevention through the public accounting of the magnitude of the crimes committed, which is often unknown to those not directly affected, and of the underlying motives, means and structures used in committing them; on the basis of this accounting, recommendations for prevention can be formulated, in particular measures for promoting reconciliation and transforming discriminatory structures. Reparations contribute to prevention through the recognition of victims as rights-bearing citizens and enabling them to more assertively claim redress for past and future violations. Although redress is triggered by a past violation, it is meant to ensure that the violation has present and future consequences.

15. The fourth constitutive element of a comprehensive transitional justice policy, guarantees of non-recurrence, is inherently forward-looking and preventive. In his three reports on the subject, the Special Rapporteur has reasoned that, whereas truth, justice, and reparation refer primarily to measures, the concept of guarantees of non-recurrence refers primarily to a function, and that function is prevention. Furthermore, he has argued that, whereas doctrinally, guarantees of non-recurrence may be the least developed pillar of transitional justice, practically, in particular from the perspective of prevention, there are vast amounts of knowledge and expertise on the topic, albeit fragmented, institutionally and otherwise (see A/70/438, A/72/523 and A/HRC/30/42).

C. Main persistent challenges to effective atrocity prevention

16. The wealth of available expertise and tools notwithstanding, the international community is still failing to prevent atrocity crimes, and we can, and must, improve. Reasons for the inconsistent record include lack of political will, where a commitment in words to atrocity prevention has not been translated into investment in concrete action, failure to take early and timely action in response to warning signs, and the disaggregation or "siloization" of knowledge and expertise.

17. In fact, there is a wealth of knowledge on conflict and atrocity prevention, but that knowledge is scattered across fields, disciplines and communities of practice and is therefore rarely deployed in a broad, systematic and interdisciplinary manner.

18. Certain effective preventive measures are not usually categorized as tools for atrocity prevention, including, at the macro level, general processes of institutionalization such as processes of State formation,[5] or constitutionalization, the establishment of structures guaranteeing more equitable economic opportunities,[6] and education reform, which have not traditionally been considered elements of prevention policy.

19. Similarly, at the meso level, initiatives aimed at strengthening judicial independence and at establishing effective civilian oversight over security forces and the adoption of community policing strategies and processes strengthening social bonds among members of a population have, in many contexts, been crucial in preventing atrocities, yet they are not usually categorized as atrocity prevention tools.

[5] Steven Pinker, "Rates of violence in State and non-State societies", in *Better Angels of our Nature: Why Violence Has Declined* (New York, Viking Penguin, 2011), pp. 47–56.

[6] The United Nations-World Bank publication *Pathways for Peace* places great emphasis on the conflict-generation potential of horizontal inequalities, showing how marginalizing whole groups from access to economic opportunities is not only a human rights violation in itself, but also correlates strongly with conflict and violence.

20. Knowledge and expertise about prevention have also suffered from various forms of reductionism, such as the following:

(a) Prevention work has primarily focused on crisis prevention and a great deal of effort and resources have been devoted to creating early warning systems. Although they are undoubtedly important, the triggering of early warning systems indicate that early preventive work has either not taken place or has failed;

(b) Much prevention work has concentrated on the role of the State in reforming institutions, relegating the contribution of civil society to the familiar functions of advocacy, monitoring and reporting. However, the presence of an organized, knowledgeable, strong and representative civil society (see chapter II.B below), and a free, diverse and independent media sector that is able to operate freely would significantly reduce the risk of atrocity crimes (see A/70/741-S/2016/71, annex). This becomes particularly evident in situations where repressive regimes restrict or control civil society; without association and communication with and to others from the outside world, individual actors are an easy target;

(c) Sustainable atrocity prevention is not merely a matter of clever institutional engineering. It requires a broader approach that promotes societal change, the internalization of cultural and individual dispositions related to tolerance, solidarity and respect for the Other. Although neither culture nor personal dispositions respond to policy interventions as institutions do, they are neither immutable nor indifferent to institutional initiatives. However, cultivating those dispositions requires a more long-term strategy than what is currently undertaken.

D. Work of the Special Rapporteur and Special Adviser on atrocity prevention

21. The Offices of the Special Rapporteur and the Special Adviser have been working on atrocity prevention independently, but along converging lines. In the present section, some of their main initiatives are highlighted.

22. In the Framework of Analysis for Atrocity Crimes, the Special Adviser lists having a history of atrocity crimes, combined with a record of impunity and weak State structures, among the core risk factors. Societies with legacies of atrocity crimes that have been inadequately addressed are more likely to resort again to violence (see A/70/741-S/2016/71, annex). In his annual reports on the responsibility to protect, the Secretary-General has provided policy options for atrocity prevention and underlined the distinction between structural prevention, seeking to reduce the vulnerability of societies to atrocities over an extended timeline, and operational prevention, aiming to avert specific threats of atrocities or to stop, or at least de-escalate, ongoing atrocities (A/65/877-S/2011/393, para. 21).[7]

23. Noting the various instruments for operational prevention at the national, regional and international levels, the Secretary-General supports the "upstreaming" of prevention mechanisms, stressing structural prevention. This is not merely in recognition of the constraints on operational prevention arising when actors on the ground already believe that viable alternatives to violence are too costly. The emphasis on structural prevention takes into account the fact that atrocity crimes are not single events that unfold overnight, but interconnected processes that develop over many years. Acting early increases opportunities for addressing latent risks before escalation and frequently enhances the effectiveness of tools to address those risks.

24. Structural prevention aims at strengthening a society's resilience to atrocity crimes by removing core causes of grievances and building structures that contribute to halting atrocities. Measures to build resilience should focus in particular on promoting effective, legitimate and inclusive governance through developing participatory and accountable

[7] The two categories were first developed in the field of conflict prevention. See Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report* (New York, 1997), 39–104.

political institutions, strengthening respect for the rule of law and equal access to justice and establishing mechanisms for the fair and transparent management of economic resources. Particular attention should be paid to addressing horizontal inequalities, protecting the rights of minority groups and promoting integrated institutions (A/67/929-S/2013/399, paras. 35–39; and A/68/947-S/2014/449, paras. 41 and 42).

25. Other critical measures to strengthen resilience include the following: building a professional and accountable security sector by establishing robust oversight mechanisms; establishing impartial institutions for overseeing political transitions, in particular an impartial and competent electoral commission; strengthening the capacities of national structures, including legislative bodies, the judiciary and national human rights institutions, to uphold good governance, human rights and the rule of law; promoting local capacity to resolve conflicts, in particular informal mechanisms to foster dialogue and mediation; educational programmes promoting tolerance and the value of diversity; promoting a robust and diverse civil society; fostering an independent and pluralistic media sector, and strengthening its capacity to counteract hate speech; and building comprehensive and legitimate transitional justice processes that acknowledge past grievances and ensure accountability for past atrocities (A/67/929-S/2013/399, paras. 40–55; and A/68/947-S/2014/449, paras. 43–58).

26. In his three reports relating to prevention, the Special Rapporteur set out an extended argument in favour of a framework approach to prevention. The main objective is to provide content and systematicity to the notion that prevention work needs to be broadened and upstreamed, a perspective on which there seems to be consensus. The content is provided by describing some elements included in a comprehensive prevention framework, such as constitutional, judicial, legal and security sector reforms. The framework aims at helping to break down the silos of knowledge and expertise, combating reductionism and preserving the rightful place of civil society in any atrocity prevention policy. The framework approach also demonstrates that truly effective prevention is not merely a matter of institutional engineering, but also of changes in culture and personal convictions. In the present report, some of those ideas are explored in more detail.

II. Preventive initiatives in the institutional sphere

A. Governance institutions

1. Constitutional reform

27. Constitutional reform processes are rarely linked to atrocity prevention. The two experts use the term "constitutionalism" to refer to the exercise of limited power in accordance with pre-existing rules in an institutional arrangement precluding the executive from being its own judge through the separation of powers.

28. The preventive potential of constitutionalism derives from the very nature of constitutional power, which at this level of abstraction is not separate from the conceptual overlap between constitutionalism and the rule of law, in that it constrains the exercise of power through laws. Constitutions establish and regulate the relationship between the branches of government among which power is divided. Fragmented power alone is checked power, which itself has some preventive potential.

29. The constraining of power through laws is also important; however, not every rule or norm, and not every combination thereof, qualify as laws. Laws must be capable of being obeyed, and people must be able to be guided by them. Although that requirement may seem inconsequential, it forms the basis for such attributes of laws as prospectivity or non-retroactivity, generality and publicity; without those attributes, rules would lose the capacity to guide behaviour.[8] The generality requirement prevents individuals from being

[8] Joseph Raz, "The rule of law and its virtue", in *The Authority of Law: Essays on Law and Morality* (New York, Oxford University Press, 1979), pp. 212–219.

singled out for discriminatory treatment, the constraint on retroactive applicability of laws protects individuals from the whims of power-holders, and the publicity requirement allows individuals to form reasonable expectations about what is permitted and prohibited and introduces requirements for rationality into law-making and accountability into the exercise of power.

30. The formalist understanding of the rule of law helps to prevent some forms of arbitrariness, but not all, as extensively argued by scholars in post-Nazi Germany and members of the truth commissions in both post-Pinochet Chile and post-apartheid South Africa. Constitutionalism in general, in particular the new constitutionalism, is not exhausted by the commitment to a thin understanding of the rule of law, as important as that may be in its own terms.[9] The new model of constitutionalism includes a bill of rights and a specialized court in most cases existing in its own constitutional space, separate from other courts, with its own mechanisms to guarantee independence,[10] and often, as one institutional means for the promotion and protection of rights, including human rights ombudspersons or independent human rights institutions.

31. The new constitutionalism's bills of rights are very different from older versions, which may have been nothing more than aspirational. A constitution with a bill of rights and the proper institutional arrangement for its enforcement, which ensures that it is more than a rhetorical gesture, can have preventive effects well beyond the general advantages of the rule of law (including predictability) and of limited power; given the vast powers of the State, even limited power can do immense damage. The present report cannot reproduce either the arguments or the evidence marshalled by various studies, including the World Bank *World Development Report 2011* or the more recent United Nations-World Bank *Pathways for Peace*, concerning the risks of violence and rights violations posed by entrenched horizontal inequalities and other forms of marginalization. Upstreaming atrocity prevention work effectively would include measures to prevent the entrenchment of such forms of inequality and marginalization. As indicated by the Special Rapporteur, there are constitutional changes that can express a more inclusive social contract, including removing discriminatory provisions from existing constitutions, as called for by many truth commissions and peace agreements, and introducing mechanisms of inclusion (A/HRC/30/42, paras. 62–67). Given that in many countries it is minority groups that are predominantly the targets of attacks, articulating clear and enforceable guarantees for minority groups in bills of rights may offer some protection and discourage both attacks on them and pre-emptive action by them.

32. In addition to the strict legal function of constitutions (legal self-restraint), they also serve an important expressive function.[11] Constitutions do not merely mirror values that are already shared, they articulate a vision of values to which a society aspires. There is therefore a utopian, normative dimension to constitutions, which helps to explain their integrative and preventive potential. The new constitutionalism, with its institutional resources to enforce bills of rights typical of the post-war period, draws a line between the past and the present and establishes effective methods of redress. They are not merely a reaction to a problematic past, however, they also embody the aspiration to overcome it. Effective protections and guarantees enable greater social integration.[12]

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[9] *Report of the Chilean National Commission on Truth and Reconciliation*, vols. 1 and 2 (Indiana, Notre Dame Press, 1993); "Truth and Reconciliation Commission: final report", vol. 4 (1998), p. 105. See also A/67/368.

[10] The creation of constitutional courts also provided an elegant solution to the difficulties of vetting the judiciary. See Samuel Issacharoff, *Fragile Democracies: Contested Power in the Era of Constitutional Courts* (New York, Cambridge University Press, 2015).

[11] András Jakab, "The Two Functions of a Constitution", in Ellen Bos and Kálmán Pócza, *Verfassungsgebung in konsolidierten Demokratien* (Baden-Baden, Germany, Nomos Publishing, 2014), pp. 78–104.

[12] Dieter Grimm, "Integration by constitution", *International Journal of Constitutional Law*, vol. 3, Nos. 2–3 (May 2005), pp. 193–210; Peter Häberle, *Verfassungsrecht als Kulturwissenschaft* (Berlin, Dunker and Humblot, 1998); Jürgen Habermas, *Faktizität und Geltung* (Suhrkamp, 1992).

33. In his report on the responsibility to protect (A/67/929-S/2013/399), the Secretary-General has underlined the link to the prevention of atrocity crimes, noting that constitutional protections can contribute to preventing atrocity crimes by creating a society based on non-discrimination. Constitutional arrangements can be vehicles for accommodating distinct national concerns while guaranteeing the protection of fundamental human rights. Constitutions can recognize the diversity of a State and grant explicit protection to different populations, including cultural, ethnic or religious minority groups. They can also ensure political recognition of diversity through the devolution of powers, including the establishment of territorial chambers to guarantee regional participation in State governance and the assignment of meaningful roles for regional administrations. Constitutions can provide for diversity in the composition of the State administrative bodies, civil service, judiciary and security forces. While no diversity management model is perfect, constitutional arrangements have the potential to create the means to address political tensions, including those with a territorial or identity component.

34. The integrative potential of constitutional reform processes, on which some of its preventive powers depends, is enhanced to the extent that the process of adopting and articulating constitutions and bills of rights is given as much attention as the outcome. To the extent that constitutions are meant to frame a social contract for a shared political project, thinking about the process in purely technocratic terms, as a matter for experts only, or worse, as an exercise that excludes sectors of the population, has proven time and again to lead to unsatisfactory results. One of the most ambitious participatory projects regarding a constitutional process was the one organized by the community liaison office established by the National Assembly of South Africa for the process leading ultimately to the adoption of the 1996 Constitution. It involved a massive education campaign on constitutional issues, media campaigns (weekly television and radio programmes reaching 10 million people), posters, brochures, leaflets, a call-in telephone line, the mailing of 4.5 million copies of the draft constitution and 486 face-to-face workshops targeting disadvantaged communities alone. An external evaluation determined that three quarters of the population of South Africa (about 30 million people) had heard about the process, and nearly 20 million knew that they could make a submission on constitutional issues. That experience showed that it is possible to make participation meaningful and inclusive, even on a large scale.[13]

35. The preventive potential of constitutions is not mere theoretical conjecture. A study commissioned by the World Bank concluded that constitutionalism not only helped countries to avoid violence, but helped them to de-escalate violence when it happened: "Governments that are constrained by a formal constitution, and that follow the rule of law are much less likely to face renewed violence in any form. In fact, any measure that limits the government's ability to act outside the law and unilaterally usurp power, makes the government a more attractive negotiating partner, and offers combatants an alternative way out of war. This suggests that a heavier focus on political institution building rather than economic development may be the most effective way to resolve existing civil wars and could help reduce the rate at which these conflicts repeat themselves over time."[14]

36. The study has focused on constitutional reform as a useful preventive tool, as part of a more comprehensive prevention framework. In a previous report, the Special Rapporteur has mentioned such other important legal measures as the ratification of international treaties. The Special Adviser has repeatedly called upon States to ratify key instruments of international human rights law and criminal law and integrate them into their national legislation. The results of a recent study highlighted how adopting "atrocity laws" doubled the likelihood of prosecutions at the national level for the relevant crimes.[15] When prosecutions can be said to have any preventive potential, not only through deterrence, but

[13] Michael Brandt and others, *Constitution-Making and Reform: Options for the Process* (Interpeace, 2011), sect. 2.2.

[14] Barbara F. Walter, "Conflict relapse and the sustainability of post-conflict peace", *World Development Report 2011*, background paper, 13 September 2010.

[15] Mark S. Berlin and Geoff Dancy, "The difference law makes: domestic atrocity laws and human rights prosecutions", *Law and Society Review*, vol. 51, No. 3 (2017), p. 560.

through the disarticulation of criminal networks, it is another example of interventions in the sphere of institutions that have a preventive potential and the need to incorporate those measures systematically.

37. Nevertheless, the Special Rapporteur and Special Adviser are gravely concerned that constitutionalism is seriously under attack from the following:

(a) Efforts to undermine judicial independence by court-packing, which refers to increasing the number of judges, in particular on higher courts, in order to create majorities sympathetic to the executive, and by manipulating judicial appointments, promotions and arbitrary disciplinary procedures;

(b) Limiting the functions and authority of judges, especially in constitutional courts, so that there only remains an empty shell, creating the false impression of separation of powers and concealing an executive that has no respect for limited power;

(c) Taking parliamentary majorities to confer mandates for thorough constitutional reforms, ignoring the difference between constitutions and ordinary legislation, with the aim of concentrating executive power;

(d) Eliminating presidential term limits without regard for the effect on an already precarious separation of powers;

(e) Disregard not only for judicial decisions and the judiciary more generally, but for the very idea of checks and balances and a rule of law-based society.

38. Those trends not only undermine commitments repeatedly made by and to the international community,[16] but primarily betray the promise of democratic government made to their own people.

2. Security institutions

39. The Special Adviser has long pointed to the heightened risk of atrocities caused by the proliferation of armed groups and by ineffective, underresourced, inadequately representative or absent security institutions. The aforementioned Framework of Analysis underlines several factors associated with security institutions that increase the risk of atrocity crimes including, under the risk factor associated with weakness of State structures, "lack of effective civilian control of security forces" and "absence of or inadequate external or internal mechanisms of oversight and accountability", as well as indicators linked to a State's capacity to commit atrocity crimes and to "enabling circumstances" (A/70/741-S/2016/71, annex, paras. 26 (d) and (f) and risk factors 5 and 7).

40. In his 2013 report, the Secretary-General argued that security sector reform processes could contribute to preventing atrocity crimes "by controlling the means to commit atrocity crimes and by deterring instances of misconduct or abuse" (A/67/929-S/2013/399, para. 44). In various reports, the Special Rapporteur has expressed concern about violations and abuses perpetrated by both State security actors and non-State actors, particularly in areas of limited governance (see A/70/438 and A/HRC/36/50).

41. Effective security sector reform can help to reduce atrocity risks and build resilience to atrocity crimes. Such a process should, inter alia, establish robust civilian oversight and strengthen internal discipline; promote the inclusion of personnel from diverse population groups; strengthen professionalism among security personnel; vet personnel to exclude identified perpetrators; provide training on international human rights law and international humanitarian law; and adopt operating procedures on the use of force and firearms (see A/67/929-S/2013/399 and A/68/947-S/2014/449). The Special Rapporteur has elaborated on several aspects of security sector reform that he considered especially relevant to prevent recurrence, including some of the aforementioned measures (see A/70/438).

42. The reform of security institutions is a key element of most transitional justice programmes and is often linked to accountability processes. Turning a blind eye to past

[16] General Assembly resolutions 59/201, 66/102; Human Rights Council resolution 19/36; Commission on Human Rights resolutions 2003/36 and 2004/30.

atrocities signals that some perpetrators are above the law, discrediting security institutions with already low levels of civic trust. Not providing accountability effectively offers post factum justification of past atrocities and breeds a (long-standing) culture of impunity in which atrocities may become normalized, rendering prevention significantly more difficult. Providing accountability for past atrocities, on the other hand, acknowledges atrocities as acts that are not tolerable or tolerated, and that no one is above the law, whatever the person's status. Where there is accountability, populations can be hopeful that State institutions, which may have failed them in the past, will protect them at present. Accountability for past atrocities thus affirms the universal validity of basic norms and values.

43. Transitional justice can offer positive lessons about achieving some degree of accountability through criminal prosecutions. However, atrocities are not isolated incidents committed by a limited number of individuals, but system crimes that typically involve large numbers of perpetrators requiring a degree of organization, resources and skills. In general, it is unlikely that all those directly or indirectly responsible for atrocities will face criminal punishment. Security sector reform can contribute to addressing the "impunity gap" by proposing options such as vetting security sector personnel and removing from the security sector those officials responsible for atrocities. Vetting works by disabling networks that may be used to commit atrocity crimes.[17]

44. However, vetting is tied to crimes already committed and not easy to carry out successfully, especially on a large scale (ibid.). Therefore, the Special Rapporteur, in his report, emphasized other measures that have a preventive potential, such as constitutionally defining the distinction between the external defence (military), internal public safety (police) and intelligence functions; rationalizing and rightsizing the security sector; narrowing military court jurisdiction; eliminating military prerogatives, such as control over aspects of politics and the economy; and strengthening civilian oversight over security institutions.

45. It is that last measure to which the experts pay particular attention, with the aim of highlighting its importance, illustrating some of the alternatives and inviting further research both into better ways of doing prevention and into the empirical effects of preventive efforts. However, effective oversight over security institutions is only one part of what should be a comprehensive, context-specific framework encompassing a range of structural and operational measures.

46. Oversight over and accountability by all parts of the executive are elements of the exercise of power in accordance with the rule of law in a constitutional regime. Given the monopoly of the security services over the use of force, this is especially important. The almost complete monopoly ceded in many places to the military, for example over most issues relating to security and defence policy, should be disputed for other reasons as well: the security and defence of a State are fundamental to the well-being of societies. However, it is unreasonable that the population (and its representatives) whom the measures are supposed to protect would not be involved in their oversight. Furthermore, security and defence typically consume large amounts of public resources and should be subject to some degree of democratic deliberation in the same way as other parts of a national budget. Security budgets, however, are frequently shrouded in secrecy, which often invites inefficiencies, corruption and concealment of financing of various forms of human rights violations.

47. A significant number of countries where atrocities have been committed, and where the risk of future atrocities is high, are those where even basic oversight mechanisms are weak or completely absent. Accountability and oversight, it has been found, are most successful if security institutions answer "to multiple audiences through multiple

[17] Pablo de Greiff, "Transitional justice, security, and development", *World Development Report 2011* background paper, 29 October 2010, pp. 17–18; see also A/70/438, paras. 21 and 23.

mechanisms".[18] A combination of internal and external and formal and informal mechanisms has proved most effective in holding security institutions accountable, hence a combination of formal accountability mechanisms such as external oversight (parliamentary oversight committees, executive oversight, independent civilian complaint and review bodies, ombudsperson offices and judicial review) and internal rules and mechanisms (ethics codes, internal discipline and line management), along with strong informal accountability provided through the scrutiny of non-governmental actors, such as the media, human rights organizations and other civil society organizations monitoring the security sector.[19]

48. While important, internal mechanisms are forms of self-policing, and therefore, in circumstances characterized by justified trust deficits (i.e. virtually all situations of heightened risk), they are insufficient. Guards cannot be expected to guard themselves entirely on their own. External oversight is therefore important. Independent civilian complaint bodies, ombudspersons, other national human rights institutions and judicial reviews are crucial. However, the focus of the present report is on one aspect of oversight, parliamentary oversight, and on one particular form of executive oversight, which has a broad, systemic scope and clear preventive potential.

49. The first form of civilian oversight mechanism that the present report highlights is a ministry of defence. Many countries have established such a ministry, and some have even appointed civilian ministers of defence. Having a ministry of defence, and even a civilian minister, is not the same thing as having a civilian ministry of defence, in which most of the staff, particularly in the senior positions, are civilians.

50. Ministries of defence have the first responsibility for the articulation of proposals concerning budgets, national security strategies, personnel and force management, and acquisitions.[20] If decisions of fundamental importance to the polity are expected to be subject to democratic accountability and oversight, civilian ministries of defence must assume those responsibilities with military personnel advice and feedback, but military personnel should not have ultimate control over those processes.

51. A civilian ministry is crucial as a conduit between security forces and legitimate authorities. Although military command may not welcome required communication with a minister rather than direct contact with the President, experience shows that such an arrangement is mutually advantageous: from the military's perspective, having a civilian make its case saves it from being perceived as self-serving and, given its monopoly over the use of force for defence matters, of being threateningly so. For civilian leaders, specifically a Head of Government, the arrangement provides a buffer that cushions crises.[21] Hence, the arrangement helps to shield the military from politics and the political sphere from militarization. This is crucial for atrocity prevention.

52. Normalizing security and defence issues as one topic among many in a regular Cabinet facilitates coordination and transparency, which, again, are essential to accountability.

53. Parliamentary participation in defence and security oversight can cover many issues, including defence legislation, policy, strategy and budgets, as well as personnel issues such as appointments to the highest ranks and the ethnic, gender, geographical and religious

[18] David H. Bayley, "The contemporary practices of policing: a comparative view", quoted in Christopher E. Stone and Heather H. Ward, "Democratic policing: a framework for action", *Policing and Society*, vol. 10, No. 1 (2000), p. 15.

[19] For details, see e.g. Geneva Centre for the Democratic Control of Armed Forces, "The contribution and role of SSR in the prevention of violent conflict", April 2017.

[20] Thomas C. Bruneau and Richard B. Goetze, Jr., "Ministries of defence and democratic control", in Thomas C. Bruneau and Scott D. Tollefson, eds., *Who Guards the Guardians and How: Democratic Civil-Military Relations* (Austin, University of Texas Press, 2006).

[21] Narcís Serra, *The Military Transition: Democratic Reform of the Armed Forces* (New York, Cambridge University Press, 2010); A/HRC/27/56/Add.1.

composition of forces. Thus, parliamentary participation in monitoring implementation will also be crucial.[22]

54. The trend suggests that dedicated parliamentary committees on defence and security that can develop expertise, are adequately staffed and resourced, have appropriate powers to convoke hearings, solicit documents, summon witnesses (including ministers and officers) and draw on independent auditing sources, and whose participation is required before bills are considered by the full floor, can make important preventive contributions. Committees can improve policy quality substantively, through the diversification of views (e.g. guaranteeing inputs by representatives from diverse regions, religious, ethnic or linguistic groups and political or ideological outlooks), and procedurally, through the demands of deliberation, especially in public but even in camera. Similarly, that form of parliamentary participation can strengthen the legitimacy of defence and security policy, in addition to canvassing views beyond those of the executive.[23]

55. Atrocity prevention will be especially well served if it is mainstreamed as a goal in each of the aforementioned functions and topics. The composition of the security and defence committee, the organization of its hearings, and requests for documentation offer opportunities to maximize inclusiveness and listen to those at greatest risk (including those who may have been victimized before). This is critical in decision-making as to the ethnic, racial, regional, linguistic or religious composition of forces, including upper ranks, especially considering that most atrocity crimes have at their root patterns of discrimination against or exclusion of groups based on those forms of identity.

56. In ethnically fractured societies, mono-ethnic forces are unlikely to be reassuring and trustworthy and, indeed, may pose risks to the protection of members of other groups. The composition and mode of operation of committees can improve the preventive potential of decisions about strategy and policy, including questions such as the location of military camps, with implications regarding economic opportunities and costs and relations with the surrounding population, neighbouring countries and so on. Finally, there is preventive potential in parliamentary participation as a check on the executive (mis)use of security forces (including intelligence services) to either commit atrocities themselves or support others in doing so.[24]

57. Both experts are aware that the preventive potential of parliamentary oversight, as it applies to preventing atrocity crimes, is contingent on conditions that are rarely met:

(a) There has been a global trend in favour of strengthening the executive power at the expense of legislatures;

(b) It is precisely those countries that could use strong parliamentary oversight over their security services that are most likely to lack, for example, dedicated committees;

(c) The usual informational asymmetries between the executive and the legislature are compounded by secrecy, diminishing the likelihood that committee members can rebut claims made by the executive or the military;

(d) Issues exist regarding the inclusivity and representativeness of legislatures and their ideological fickleness vis-à-vis executives ("rubber stamp" parliaments) that successfully transform topics into matters of security for their political advantage, all of which undercut the preventive potential of such oversight.

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[22] Hans Born and others, *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices* (Geneva, Inter-Parliamentary Union; Geneva Centre for the Democratic Control of Armed Forces, 2003).

[23] Jeanne Kinney Giraldo, "Legislatures and national defence: global comparisons", in Bruneau and Tollefson, eds., *Who Guards the Guardians and How*.

[24] Aurel Croissant and David Kuehn, eds., *Reforming Civil-Military Relations in New Democracies: Democratic Control in Comparative Perspectives* (Cham, Switzerland, Springer International Publishing, 2017); Thomas C. Bruneau and Florina Cristiana Matei, eds., *The Routledge Handbook of Civil-Military Relations* (New York, Routledge, 2013).

B. Civil society institutions

58. Civil society plays a key role in providing checks and balances in societies, holding Governments accountable and advocating the fulfilment of rights. An active, diverse and robust civil society that can operate freely and openly helps to ensure accountability of leaders, respect for the rule of law and the inclusion of all sectors of society in decision-making processes. In the Framework of Analysis, the lack of a strong, organized and representative civil society, including free, diverse and independent national media, is noted as an indicator of increased risk of atrocity crimes (A/70/741-S/2016/71, annex, risk factor 6).

59. Civil society has undoubtedly contributed to great victories in the domain of rights and the prevention of atrocities and systematic violations. Civil society organizations can claim important victories, including the abolition of slavery; desegregation in many parts of the world, including the United States of America and South Africa; the end of the political disenfranchisement of minority groups and women in the nineteenth and early twentieth centuries; the fight against impunity, particularly in post-authoritarian transitions; and recently, huge advances in the promotion of lesbian, gay, bisexual and transgender rights, among others.

60. This is not to say that civil society always plays a positive role. In each of those struggles, a sector of civil society stood opposed. Currently, there is significant mobilization of civil society in favour of populist, xenophobic and racist agendas.

61. Nevertheless, civil society has generally been an engine of progress for human rights. Empirical evidence suggests robust correlations between a strong and autonomous civil society and positive human rights indicators. This is partly because civil society aggregates and magnifies voices, thereby signalling loudly and clearly citizens' preferences to Governments, not merely for information but as an unambiguous claim. As the author of a study involving 60 countries notes in the summary of his findings, "the strength of civil society prior to transition and its density post-transition not only play a significant role in the deepening of political freedoms and civil liberties among transitional citizens, but also lead to better institutional performance".[25]

62. Aggregation and magnification can be considered an important social mechanism through which civil society plays its role of contributing to steering the use of public power. This in itself may give effective civil societies a preventive edge, as those capable of effective aggregation and magnification predictably will not admit certain types of treatment. In other words, the relationship between civil society and authorities in a country with strong civil society organizations is not purely reactive but anticipatory as well.

63. There is another mechanism by which civil society exercises a preventive function: it is well known that one of the (intentional) effects of the exercise of abuse is to break social bonds and isolate people from one another. That "isolating power", already eloquently stressed by Hannah Arendt in the 1950s,[26] is instrumental to the effectiveness of abuse of the individual because it hampers social coordination and exchange of information, which is necessary for any organized opposition.

64. Civil society actors can contribute to building social cohesion and resilience of societies or populations. By uniting people towards the achievement of common objectives, establishing dialogue among different groups and empowering them through education about their rights and the rights of others, and by informing people about important public issues and how they can participate in public processes in their interest, civil society actors promote an environment in which atrocity crimes are less likely to occur.

65. The contribution of civil society to atrocity prevention through concrete means such as advocacy, monitoring, reporting, education, conflict prevention and resolution and reconciliation initiatives, among others, has already been acknowledged. For this reason, a

[25] Rollin F. Tusalem, "A boon or a bane? The role of civil society in third- and fourth-wave democracies", *International Political Sciences Review*, vol. 28, No. 3 (2007), p. 361.

[26] Hannah Arendt, *The Origins of Totalitarianism* (New York, Meridian Books, 1958).

framework approach to prevention should include measures to strengthen civil society and increase its autonomy. In addition to direct means, some indirect means of support include: repealing laws that limit civic space; fostering an enabling environment;[27] establishing platforms, coalitions or networks; and creating official forums for official consultation (see A/72/523).

66. Official forums of consultation, not mere "talking shops", can provide powerful motivation for strengthening civil society, not just generically but with specialized expertise. For example, rules allowing civil society submission and participation in legislative discussions not only manifest and foster the virtues of inclusiveness and transparency but also provide a weighty reason for civil society to strengthen its capacities (see A/71/567 and A/HRC/34/62).

67. In situations where atrocity crimes have been committed, the executive power has turned the security sector into an apparatus for its continued permanence in power, through patronage, ethnicization and both overt and covert corruption. That abusive control over power is one of the risk factors that allow atrocities to be committed in the first place, as the Framework of Analysis highlights. Security ceases to be a public good and becomes something more akin to the spoils, or privileges, of power holders.

68. One way of breaking that stranglehold is to open the process of defining security needs to populations and other stakeholders, that is, to civil society. Participation, for example, in formulating national defence policies allows those who traditionally have been not only marginalized but victimized by security forces, in particular women, to define their security needs. Simple tools such as a local security survey, if carried out inclusively, is a step in the right direction.[28]

69. Although civil society and the civilian parts of government usually suffer the same dearth of technical expertise, that deficit can be and has been compensated for in various parts of the world, with significant results. The processes leading to the transformation of the South African defence forces, the Defence White Paper (1996), the Defence Review (1998) and the Defence Act, 2002, were consultative processes to which civil society organizations made crucial contributions.[29] Similarly, the Defence Review in post-conflict Sierra Leone, which included consultations with the Truth and Reconciliation Commission and civil society organizations, among other stakeholders, led to profound changes in the country's security sector.[30]

70. Civil society has developed transnational competencies on security sector reform. An important example is the African Security Sector Network, a pan-African network of civil society actors, security professionals and academics working in that area. The Network works to strengthen capacities of African Governments, parliaments, security institutions, intergovernmental organizations, civil society organizations and other actors to undertake and own such reform processes. The Network assisted the African Union in elaborating its Policy Framework on Security Sector Reform, which was adopted by the African Union Heads of State in January 2013. Subsequently, it helped to build the reform capacity of the African Union, including by developing operational guidance notes and manuals for the implementation of the Policy Framework. It also contributes to high-level

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[27] Organization for Economic Cooperation and Development, "OECD DAC handbook on security sector reform: supporting security and justice" (Paris, OECD Publishing, 2007).

[28] Laurie Nathan, *No Ownership, No Commitment: A Guide to Local Ownership of Security Sector Reform* (Birmingham, University of Birmingham, 2007), p. 31.

[29] Sanam Narghi Anderlini, *Negotiating the Transition to Democracy and Reforming the Security Sector: The Vital Contribution of South African Women* (Hunt Alternatives Fund, 2004); Laurie Nathan, "South African case study: inclusive SSR design and the white paper on defence", in Nathan, *No Ownership*; Sandy Africa, *The Transformation of the South African Security Sector: Lessons and Challenges*, Geneva Centre for the Democratic Control of Armed Forces Policy Paper, No. 33 (Geneva, 2011).

[30] Kellie Conteh, "Sierra Leone case study: local ownership of the security sector review and transformation processes", in Nathan, *No Ownership*.

African Union dialogues on the subject, participates in African Union and United Nations assessment missions in Africa and promotes South-South experience sharing thereon.[31]

III. Interventions in the domains of culture and personal dispositions

71. The Special Rapporteur has consistently argued that transformations that transitional justice seeks to achieve cannot be accomplished durably and sustainably through institutional reforms alone. Neither redress nor prevention is merely a matter of clever institutional engineering. Both call, ultimately, for transformations in culture and personal dispositions.

72. While the study cannot sort out complex relationships between institutional, cultural and individual initiatives,[32] the history of institutional reforms that fail to find support in the local culture or personal dispositions or convictions is longer than that of successes.

73. The two experts take the opportunity to emphasize two types of initiatives with immense potential, namely history education and religion, not least because they help to establish links among the three spheres of intervention (institutional, cultural and personal). Both can be powerful factors of social mobilization and transformation (for good and ill).

74. Both authoritarian regimes and conflict-affected countries are prone to politicize education, including history education, with divisive, one-sided accounts being deliberately used to preserve a narrative that perpetuates existing (political and/or economic) power structures. In such situations, education creates or sustains social cleavages, fuelling intolerance and resentment, furthers inequality and forms of marginalization (through the manipulation of both access to education and its content) and thereby increases the risk of future violence and atrocity crimes.

75. In many countries with a problematic and divisive history, a decision is made to not teach history at all, teach only "ancient" (pre-conflict) history or limit history teaching to basic chronologies without any effort to contextualize or explain.[33] While it is understandably not easy to reach rapid consensus on the best way to teach a conflict's history (especially when atrocities have been committed) in its immediate aftermath, it should be clear that avoiding the topic altogether is no solution; at the family and community levels, informal narratives, which replicate old divisions, reproduce stereotypes and instil fear and mistrust, will continue to be transmitted.

76. The reform of curricular and history textbooks has not been accomplished quickly virtually anywhere,[34] but there have been successes: one is to integrate dealing with the past into other subjects, as was done in Argentina and Chile in the years between the transition and the reform of history textbooks. The teaching of the recent past took place in civics classes, while studying human rights and the Constitution.[35]

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[31] See http://africansecuritynetwork.org/assn/.

[32] Pablo de Greiff, "On making the invisible visible: the role of cultural interventions in transitional justice processes", in Clara Ramírez-Barat, ed., *Transitional Justice, Culture, and Society: Beyond Outreach*, Advancing Transitional Justice Series (New York, Social Science Research Council, 2014).

[33] United Nations Children's Fund, "The role of education in peacebuilding in Burundi", policy brief, p. 3, cited in A/HRC/30/42/Add.1.

[34] It took 15 years after the death of Franco for Spanish textbooks to start analysing the dictatorship (A/HRC/27/56/Add.1); almost 10 years after the end of the dictatorship for Chile to review its textbooks (Leonora Reyes J., "A 40 años del golpe de Estado: el debate curricular inacabado", in *Docencia*, No. 50 (2013)); and 13 years in Argentina (Mario Carretero and Marcelo Borrelli, "Memorias recientes y pasados en conflicto: ¿cómo enseñar historia reciente en la escuela?", *Cultura y Educación*, vol. 20, No. 2 (2008).

[35] Ana María Rodino, "Teaching about the recent past and citizenship education during democratic transitions", in Clara Ramírez-Barat and Roger Duthie, eds., *Transitional Justice and Education: Learning Peace*, Advancing Transitional Justice Series (New York, Social Science Research Council, 2017).

77. Some truth commissions have produced different versions of their reports along with pedagogical materials, sometimes including child-friendly versions. Some of that material is eventually integrated into classes. Teaching materials that do not try to close the discussion about the past but instead keep the debate alive have also been produced. They include transnational, multi-perspective histories, like those produced by the Centre for Democracy and Reconciliation in South-East Europe for schools in the Balkans.[36] *Parallel Histories*, the textbook developed by the Peace Research Institute in the Middle East, is particularly noteworthy;[37] given the impossibility of reaching a common or even a bridging narrative at this time, it contains narratives of events in Israel and the State of Palestine in the twentieth century in three-columned pages: one column carries the Palestinian narrative, another the Israeli narrative. The third is an empty column for students to write down their own ideas, reactions, questions, additional data or conclusions. That example also demonstrates what reformed history education should be aimed at: enabling children and adolescents to develop their own historical perspective.

78. Experts concur that successful education about the past, including past atrocities, is not merely about producing reliable, accurate and impartial textbooks. Just as crucial is adopting pedagogical methods that are suitable to the task and that support a productive reflection about past events and human behaviour, as well as contribute to reconciliation processes. Unfortunately, such methodologies are not always in plentiful supply in post-authoritarian or post-conflict settings (where the pedagogy has often been part of the problem). Argentina, Cambodia, Northern Ireland and South Africa, among others, have experiences from which much can be learned.[38]

79. Education has great prevention potential by imparting information that has gone through well-known methods that aim for a high degree of reliability. While nothing guarantees absolute transparency, accuracy, completeness, inclusiveness or finality in the construction of accounts of the past, certain methods have proved better than others. Procedural safeguards that will more likely lead to an objective and thorough accounting of history can be put in place.

80. Education also has great preventive potential by helping people to internalize a conception of themselves and others as rights holders and deserving of moral consideration, and by instilling intellectual habits of independent and critical thinking. Finally, education can help to prevent atrocities and violations by contributing to the development of empathetic responses and of emotional dispositions of consideration and respect.

81. Religion, similarly, has preventive potential that can be more actively tapped. In 2017, the Office of the Special Adviser produced the Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes, an important document that highlights the role that religious leaders and actors can play in preventing atrocity crimes.[39] In the Plan of Action, the potential of religious leaders and actors to influence not only the behaviour of those who follow them but also their beliefs and dispositions is acknowledged: they can use their position to spread messages of hatred and hostility that can incite violence, or to spread messages of peace, tolerance, acceptance and mutual respect and take action to reduce tensions between communities. Religious leaders and actors are enjoined to speak out not only when one's own community is targeted but also when other communities are. Local communities are called upon to support religious leaders and actors when they speak out on preventing incitement to violence, whichever faith they represent. Academic and education institutions and civil society organizations are invited to provide training to religious leaders and actors on human rights monitoring and reporting, the prevention of atrocity crimes and their incitement and the use of non-violent methods to confront and stand up against incitement

[36] See http://cdrsee.org/projects/education-projects/joint-history-project.

[37] See http://vispo.com/PRIME/.

[38] See e.g. "Educación y memoria", established by the Ministry of Education of Argentina to promote the teaching of recent history.

[39] See www.un.org/en/genocideprevention/documents/publications-and-resources/Plan%20of%20Action_Religious_Prevent-Incite-WEB-rev3.pdf.

to violence, and State institutions are called upon to repeal blasphemy laws, as they have a stifling impact on the enjoyment of the right to freedom of religion or belief and on respectful dialogue and debate between communities.

82. In the Plan of Action, religious leaders and actors are asked to seek opportunities to strengthen expertise, including on interfaith knowledge and dialogue, and to use social media and youth engagement. Religious institutions are called upon to promote critical thinking and respect for international human rights standards and to increase understanding and respect for other religions. To that end, the Plan of Action encourages religious institutions to include in education curricula for religious leaders and actors instruction on: (a) different religions and beliefs; (b) international norms and standards on freedom of religion or belief; and (c) global citizenship.

83. Finally, State institutions are called upon to promote a human rights-centred approach to education; embed critical thinking in youth education; develop school curricula for public schools that include teaching about religions and beliefs as a subject inclusive of different traditions; and include in school curricula, from early childhood to university-level education, civic and peace education, as well as the history of atrocity crimes and how to prevent their future recurrence.

IV. Conclusions and recommendations

84. Failure to prevent or halt systematic human rights violations increases the risk of violence, conflict and atrocity crimes. Transitional justice has made important contributions to establishing, operationalizing and realizing the rights to truth, justice and reparations. A comprehensive transitional justice policy can therefore contribute to breaking cycles of impunity and marginalization, which, if left unaddressed, increase the risks of recurrence.

85. The authors encourage greater commitment on the part of Member States that have experienced atrocity crimes to the design and implementation of a comprehensive framework of transitional justice policies to address root causes of violence and atrocity crimes. They also encourage the international community to support such processes in a more sustainable manner. Each process must be tailored to the specifics of each context and developed through a comprehensive process of consultation at the national level.

86. Guarantees of non-recurrence, the fourth pillar of a comprehensive transitional justice policy, is an explicitly prospective and preventive category of measures. While it is doctrinally the least developed of the four, there is ample (albeit fragmented) knowledge and expertise concerning policies and practices that are effective in preventing systematic violations and atrocities.

87. The authors celebrate the recent increase of interest in prevention and encourage Member States, multilateral and regional organizations, and international cooperation agencies to enhance efforts and commitment to develop and implement effective preventive policies.

88. The greatest obstacles are weak commitment, insufficient investment in prevention measures, late interventions and the fragmentation (siloization) of knowledge and expertise. To that end, a framework approach would give substantive content to the broadening and upstream movement of prevention work.

89. A comprehensive framework would include all measures that contribute to the prevention of atrocities. Building on the 2013 report of the Secretary-General on the responsibility to protect (A/67/929-S/2013/399, paras. 30–64), which provides an overview of those measures, such a framework would place the important contributions of civil society at the centre. The authors urge the United Nations system and others to undertake expeditiously the serious and systematic work required to develop a truly comprehensive preventive framework.

90. The study highlights the contribution of some measures whose preventive potential is generally overlooked. In the domain of governance institutions, Member States are urged to engage in serious processes of constitutionalization, which would include the articulation of a bill of rights and the establishment of an independent and strong constitutional court, empowered to guarantee the fundamental rights of all, without discrimination. The "new constitutionalism" derives part of its preventive potential from its socially integrative power. A consultative and inclusive constitutional reform process can be a vehicle for accommodating distinct national concerns while guaranteeing the protection of the fundamental human rights of all and grant explicit protection to various populations, including ethnic and religious minority groups.

91. The authors express their grave concern at the undermining of constitutionalism, including the sidelining of the authority and independence of constitutional courts, which weakens the separation of powers and promotes the concentration of unlimited and unchecked power in the executive.

92. Regarding crucial reforms in the security sector in the aftermath of atrocities, the study highlights the preventive potential of robust civilian oversight mechanisms and encourages Member States to adopt multilayered oversight mechanisms. It encourages multilateral organizations and cooperation agencies to emphasize and support such reforms.

93. Security sector reform should be prominently linked to both retrospective and prospective justice and rights-related concerns. The authors call for dispersed oversight mechanisms, including the formation or strengthening of civilian ministries of defence and parliamentary oversight committees with real expertise and sufficient resources.

94. The study highlights the important role that civil society can play in atrocity prevention, far beyond its commonly recognized contributions (monitoring, reporting, advocacy). A diverse and robust civil society, including pluralistic media, that is allowed to operate freely and openly without fear of persecution or reprisal helps to ensure accountability of leaders, respect for the rule of law and the inclusion of all sectors of society in decision-making processes. In that way, it can contribute to strengthening the capacity of a society to mitigate and overcome the risks associated with atrocity crimes.

95. The authors argue in favour of disputing the monopoly enjoyed by the security sector regarding public order, defence and security *policy* and encourage Member States, multilateral institutions and cooperation agencies, in addition to national security sectors themselves, to contribute to the cultivation of such capacities, in the conviction that everyone stands to gain from such a partnership, in which different policy alternatives can be assessed.

96. The authors encourage Member States, multilateral organizations and cooperation agencies to dedicate resources to the development of policies to strengthen civil society. A legal framework for its free operation and the repeal of legislation infringing its freedom are only the basics. Other steps include legislation that requires (or at least allows) civil society inputs to legislative and other decision-making processes. The establishment of networks of civil society organizations, both nationally and internationally, should also be supported.

97. Effective prevention, including atrocity prevention, is not simply a question of institutional engineering but also calls for initiatives that foster a culture of prevention and changes in personal dispositions. The study highlights the importance of including in national curricula history education that includes objective, multifaceted accounts of past atrocities, and the preventive role that religious leaders and actors can play.

98. The United Nations system can play a privileged role in the development of a comprehensive atrocity prevention framework. To that end, the authors recommend the following measures:

(a) A thorough, integrated assessment of the vulnerability of each country to atrocity crimes should be undertaken at the country level, using the risk factors of the Framework of Analysis for Atrocity Crimes as a guide. Based on that analysis, a comprehensive prevention framework should be developed. The breadth of a comprehensive prevention framework needs to be matched by the deployment of capacities in a more seamless way to overcome the aforementioned siloization. That approach could be integrated into the work under a revitalized joint framework, informed by a conflict and development analysis, as the Secretary-General highlighted in his most recent report on peacebuilding and sustaining peace (see A/72/707-S/2018/43, para. 24);

(b) The human rights pillar should be fully integrated with the development and the peace and security pillars in the Secretary-General's prevention platform; nowhere are the links as important as in atrocity prevention. An atrocity prevention lens should be integrated into the work under all three pillars and better coordinated;

(c) The Office of the Special Adviser should be strengthened and its mandate reconfigured to better support the integration of atrocity prevention into the work of the United Nations, including at the country level;

(d) The authors recommend that the Secretary-General support efforts to finalize the draft international convention on crimes against humanity. Swift finalization and ratification/accession will signal a genuine commitment on the part of the international community;

(e) The envisaged "new generation of United Nations country teams ... led by an impartial, independent and empowered resident coordinator" (ibid.) could prove groundbreaking in achieving more effective atrocity prevention. Consideration should be given to encouraging resident coordinators to form a small pioneering group to test the integration of the framework approach, adapted to each country's specificity, for the joint analysis and planning work of their respective country teams.

Annex

1. The Special Rapporteur and the Special Adviser held two expert group meetings exploring the relationship between transitional justice and atrocity prevention, bringing together representatives of Member States, United Nations agencies, funds and programmes, United Nations mandate holders, civil society organizations and the academic community. The first meeting took place in New York (19–20 September 2017), focusing on how education and constitutional reform can contribute to atrocity prevention. The second meeting, held in Geneva (13–14 November 2017), examined the potential contributions of security sector reform civil society to atrocity prevention. The Special Rapporteur and the Special Adviser thank all participants for their contributions.

2. The two experts also sought written inputs from Member States and civil society organizations, and also received contributions from various United Nations entities, academic institutions and individual experts, and are grateful for all views received.